



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
Office of the City Attorney
P. O. Box 850137
Mesquite, Texas 751850137

OR2005-01641

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219078

The City of Mesquite Police Department (the "department") received a request for all 9-1-1 call sheets and reports regarding a specific address and time period. You state that you will release some information, but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that Exhibit #4 may be withheld under section 552.108 of the Governmental Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit #4 relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.¹ *See* Gov't Code § 552.007.

You also claim that Exhibit #2 is excepted from disclosure under section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses section 58.007 of the Family Code. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007(c) provides:

...

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). You claim that the report in Exhibit #2 is confidential under section 58.007. We have reviewed Exhibit #2 and agree that it involves an allegation that a juvenile engaged in conduct indicating a need for supervision after September 1, 1997.

¹As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Thus, Exhibit #2 is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, Exhibit #2 is confidential in its entirety in accordance with section 58.007(c) of the Family Code. Thus, Exhibit #2 must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We now address your argument concerning Exhibit #3. Initially, you claim that portions of Exhibit #3 contain 9-1-1 caller information that is confidential under chapter 772.118 of the Health and Safety Code and encompassed by section 552.101 of the Government Code. Chapter 772 authorizes the development of local emergency communications districts. Section 772.118 applies only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. You state that the City of Mesquite is part of an emergency communication district that was established under section 772.118.² Thus, based on your representations and, if the 9-1-1 caller's addresses and telephone numbers were provided to the department by a service provider, we determine that the addresses and telephone numbers of the 9-1-1 callers you have marked, plus additional information we have marked, in Exhibit #3 are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You also claim that portions of Exhibit #3 are protected by common-law privacy, which is also encompassed by section 552.101. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the information submitted in Exhibit #3 and agree that the marked information must be withheld under section 552.101 of the Government Code and common-law privacy.

You also claim that Exhibit #3 contains criminal history record information ("CHRI"). CHRI that is generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. *See* Gov't Code § 411.083. We have reviewed the information in Exhibit #3 and find that it does not contain any CHRI generated by TCIC or NCIC, and thus nothing in Exhibit #3 may be withheld on that basis.

We note that Exhibit #3 contains social security numbers that may in some circumstances be confidential under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open

²Section 772.118 applies to an emergency communication district for a county with a population of more than two million.

Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, we note that the laws making social security numbers confidential are based on privacy concerns. Here, the requestor claims to be her mother's authorized representative. Section 552.023 gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. *See* Gov't Code § 552.023. Thus, if the requestor is her mother's authorized representative, you may not withhold her mother's social security number. Moreover, you have not cited a law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes you to obtain or maintain social security numbers. Thus, we have no basis for concluding that any of the remaining social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Thus, prior to releasing any of the other social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you claim that portions of Exhibit #3 are excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note, however, that section 552.130 protects privacy interests. If the requestor is her mother's authorized representative, then she has a special right of access to her mother's motor vehicle information pursuant to section 552.023. *See* Gov't Code § 552.023. If the requestor does not have a special right of access, then you must withhold her mother's motor vehicle information and the remaining motor vehicle information under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold Exhibit #4 pursuant to section 552.108 of the Government Code. The department must withhold Exhibit #2 pursuant to section 552.101 of the Government Code in conjunction with 58.007 of the Family Code. The originating addresses and telephone numbers of a 9-1-1 callers you

have marked, plus the additional information we have marked, in Exhibit #3 must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the marked information in Exhibit #3 pursuant to section 552.101 of the Government Code and common-law privacy. If the requestor is her mother's authorized representative, you may not withhold her mother's social security number, however the other social security numbers in Exhibit #3 may be confidential under federal law. Additionally, if the requestor is her mother's authorized representative, you may not withhold her mother's motor vehicle information, however the remaining motor vehicle information in Exhibit #3 must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

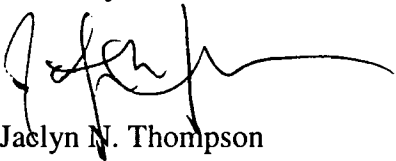
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaelyn N. Thompson', with a long horizontal flourish extending to the right.

Jaelyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 219078

Enc. Submitted documents

c: Ms. Gina Smith
1325 Brazos Blvd.
Lewisville, Texas 75077
(w/o enclosures)